No. 90-8466

In The

Supreme Court of the United States

October Term, 1991

DAVID E. RIGGINS,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of The State Of Nevada

JOINT APPENDIX

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Petition For Certiorari Filed June 13, 1991
Certiorari Granted October 7, 1991

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March 2, 1988:	Order of Nevada District Court, Clark County appointing psychiatrist William D. O'Gorman, M.D., to determine competency
March 18, 1988:	Order declaring petitioner legally sane and competent to stand trial
March 25, 1988:	Preliminary Hearing in the Justice Court of Las Vegas Township, Clark County, Nevada
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June 10, 1988:	Motion to terminate administration of medication
June 10, 1988:	Notice of insanity defense filed
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April 15, 1991:	Order of Supreme Court of Nevada staying remittee pending the filing of a petition for writ of certiorari

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Psychiatric Report of David Riggins by Rajendra Patel, M.D., January 24, 1987

ADMITTING DIAGNOSIS:

Axis I ..... Paranoid schizophrenia
Axis II ..... None
Axis III ..... None
Axis IV ..... Moderate
Axis V ..... Poor.

REASON FOR ADMISSION:

Mr. Riggins is a thirty year old caucasian male who was admitted on a 5150 from his home because patient was very delusional. He was wandering on the streets in his underwear at 2 o'clock in the morning. Was stating that his father is J.F.K. and his mother is Marilyn Monroe. He was also feeling that the Mafia is after him because he owns stocks in I.B.M. Patient has been hospitalized in the past but no other information was available.

SIGNIFICANT FINDINGS:

At the time of admission, patient was poorly kempt. His stream of talk was coherent but his content showed a lot of delusional thinking. Mood was depressed. Affect was flat. He said that he hears voices of the God and Devil and also from St. Peter. He seems of average intelligence. There were no memory deficits. He denied any suicidal thoughts.

INITIAL IMPRESSION:

Axis I ..... Paranoid schizophrenia.

HOSPITAL COURSE:

The patient was admitted to I.C.U. He was closely observed. He required restraints initially because he was very agitated. Patient was put on Haldol 5 mgs. IM q 4 hrs PRN for agitation.

Initial laboratory workup showed a W.B.C. of 6.6, hemoglobin of 15.7, hematocrit of 46, MC was 92, differential was essentially unremarkable. Glucose was 87, BUN was 12, Creatinine 1, LDH 228, SGOT 17, SGPT 22. All of the results were unremarkable.

Physical examination showed no acute medical problems.

Patient continued to be delusional and paranoid, he was put on a 14 day Hold. On Haldol the patient improved somewhat, his delusional thinking was somewhat better and there were no hallucinations. He accepted to sign voluntary admission and he was transferred to the Open Unit. On the following day the patient went out of the hospital and did not return. He was not suicidal or homicidal at the time of discharge. Patient was discharged A.M.A. on 1-22-87 from AWOL status.

DISCHARGE SUMMARY

CONDITION AT THE TIME OF DISCHARGE:

Patient is still delusional, but not suicidal and not homocidal. He was able to take care of his personal

needs. Patient, at the time of his discharge, was not holdable.

DISCHARGE MEDICATIONS:

Medications at the time of discharge – none.

RECOMMENDATIONS FOR AFTERCARE:

Patient was discharged A.M.A. so no arrangements could have been made. He will followed [sic] in the office if he makes a contact.

FINAL DIAGNOSIS:

Axis I..... Paranoid schizophrenia.
Axis II ..... None
Axis III ..... None
Axis IV ..... Moderate.
Axis V ..... Poor.

RP/sl
d:1-22-87
t:1-24-87

/s/ _____
RAJENDRA PATEL, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. DAVID EDWARD RIGGINS, Defendant.	)	CASE NO. CE1906 (Filed January 13, 1989)

MOTION TO SUSPEND TRIAL UNTIL DEFENDANT'S COMPETENCE IS DETERMINED; REQUEST FOR REINSTATEMENT OF BAIL

DATE OF HEARING: January 20, 1988
TIME OF HEARING: 9:00 A.M.

COMES NOW the Defendant, DAVID EDWARD RIGGINS, by and through his undersigned counsel, MAC J. YAMPOLSKY, ESQ., and respectfully moves this Honorable Court to suspend the trial of this case until the question of the Defendant's competence is determined and to reinstate bail.

This Motion is made and based upon the attached Memorandum of Points and Authorities.

Respectfully submitted:

By: /s/ Mace J. Yampolsky
MACE J. YAMPOLSKY, ESQ.
Attorney for Defendant

District Court, Clark County, Nevada (caption, etc.)

Psychiatric Evaluation Report by Franklin D. Master, M.D.

February 8, 1988

Mace J. Yampolsky, Attorney-at-Law
520 South Fourth Street
Las Vegas, Nevada 89101-6593

RE: David E. Riggins

Dear Mr. Yampolsky:

I interviewed your client, a 31-year-old Caucasian male, at the Clark County Jail February 7, 1988. I also carefully reviewed the discovery sheets that you had provided me.

Prior to interviewing the defendant, I assured him that you would be the only individual receiving my report; therefore, what we discussed would be of a confidential, privileged nature as this was our own relationship with him.

The defendant indicates that he knows the charge against him and the possibile [sic] penalties should he be found guilty. He tells me he had purchased cocaine in the past from his allege victim.

The defendant has resided in Las Vegas for 11 years. He was born in West Covina, California but was reared in South Pasadena, California. He dropped out of school when he was in his senior year at age 18. He denies juvenile arrests. He states he had to repeat the first grade and that he was in a learning disability class. He admits to prior arrests for traffic citations and one assault charge

against a homosexual. He states that case was later dismissed. He states that prior to his arrest he was employed both at the Silver Dragon Restaurant as a busboy and at Terrible Herbst as a cashier. He rents a room from a male roommate (non-homosexual relationship, according to the defendant). He states that he first used marijuana at age 13, that he used LSD at age 18, and that he has been injecting cocaine for the past 1½ years. He stated that on the night in question, he had used cocaine as recently as an hour before the killing. He readily admits to good memory of the events that occurred.

The defendant states that he killed his victim in self-defense as the victim was trying to kill him with a knife, and that he (the defendant) took the knife away from the alleged victim and stabbed him in the heart. He states that it was all justifiable homocide, although he states that he is sorry now that he killed this individual. He gives conflicting stories as he describes the event, at one point stating the individual was still alive, verbally forgave him and did not want him to send for an ambulance or get any help as he was glad to be dying; then he later changes his story to state that the victim was already dead when he left, that he had only stabbed him 12 times and he really does not believe he stabbed him 32 times. He also gave conflicting stories in that he states his alleged victim had AIDS and was due to die anyway and that he, the defendant, hates queers because he was raped himself at age 18 by a black male homosexual. Then he changed his story to state that he knows the alleged victim was not homosexual since he and the alleged victim had both dated the same girlfriend in the past.

The defendant was extremely evasive when I asked why he had to stab the alleged victim so many times, adding that "it was all justifiable homocide" and that he was merely acting out of self-defense.

On mental status examination, this is a thin Caucasian male with a trim black beard and glasses. I found him calm and coherent. I felt that he was carefully weighing the interviewer throughout the interview in a rational fashion to see the interviewer's reactions. I also felt he was guarded and evasive on furnishing any information which might be detrimental to his own case.

The defendant also states that he is currently taking 450 mg a day of Mellaril, that he has been using Mellaril for six years, that he used it in 1979 from Dr. D'Gorman here In Las Vegas and that he also has seen a Dr. Lutkey in Rosemead, California, and a Dr. White In Albambra, California.

Despite the fact that the defendant states he is on medication, I feel the defendant meets all criteria for competency to assist the defense counsel and that, at the time of the alleged offense, the defendant knew right from wrong. His behavior both at the time of the arrest and the fact that he had taken articles with him and fled the scene of the crime indicates that at the time of the alleged offense he was aware that what he did was wrong. If, indeed, the defendant's story of being on cocaine at that time could be verified, possibly his being intoxicated with cocaine and if, indeed, there was a fight as he described, then these events might possibly be mitigating circumstances.

As stated, I found the defendant to be using what I felt was some duplicity despite my assurance to him that the

interview would be confidential. I feel that the defendant is competent and at the time of the alleged event qualified for being legally sane.

Sincerely,

/s/ Franklin D. Master
Franklin D. Master, M.D.

District Court, Clark County, Nevada (Caption omitted, etc.)

Psychiatric Evaluation by Jacy A. Jurasky, M.D.

February 9, 1988

Mace J. Yampolsky, Esq.
520 So. Fourth St.
Las Vegas, NV. 89101

Re: Psychiatric Evaluation of: David E. Riggins
Case #: C 81906

Dear Sir(s):

David E. Riggins, 31, was interviewed on February 9, 1988 at the CCDC where he is being held accused of Robbery and Murder, both WUDW. I am in possession of copies of the discovery. This evaluation was requested because counsel believes the responses of his client have at times appeared bizarre and not responsive.

Riggins, a bespectacled man of average height and appearance was outwardly cooperative and responsive during our examination but he manifested numerous signs indicating severe mental illness. He told me he came from California 13 years ago and has lived here since. He works in many differing but menial capacities, is unmarried, has never been in the military, and dropped out before completing high school.

In the same flattened affect and monotone he told me his father had him committed in a California mental hospital two years ago but gave no reason for it. "They threw me out when they found out I couldn't pay for it." He went on to say, "I murdered Wade because he had killed to [sic] little girls. One in California and one here.

That's in the records. It was justifiable because I have no feelings about it."

Many of Riggins' sentences had the same rigidity, unemotional, sometimes disconnected, quality of withdrawal usually associated with chronic and severe schizophrenia. He told me he hears voices all the time, sometimes friendly, sometimes not. He identified the voices as belonging to a David O'Reilly and a John Holmes. He was unable to subtract 7's serially. He lacks insight. Judgment is considered psychotic.

I believe this defendant is suffering from a mental illness of psychotic proportions with delusions of a paranoic nature, ideas of reference, auditory hallucinations, and a rigid and inappropriate affect. As such I find him incompetent to advise reliably with counsel, aid in his own defense, recall evidence, or give testimony if called upon to do so. I would suggest he be transferred to a mental hospital for further diagnosis and treatment. He must be considered potentially dangerous to himself and others.

Sincerely,

/s/ Jack A. Jurasky
Jack A. Jurasky, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

(Caption omitted in printing)

ORDER
SANE AND REMAND

DATE OF HEARING MARCH 9, 1987

TIME OF HEARING 9:00 A.M.

THE MATTER having come on for hearing on the 9th day of March, 1988, for the purpose of consideration of psychiatric examination of defendant; the defendant being present with his counsel, MACE YAMPOLSKY; the plaintiff being represented by REX BELL, District Attorney, through BILL A. BERRETT, Deputy; and the Court having considered the reports of Dr. William D. O'Gorman and Dr. Franklin D. Master, both licensed and practicing psychiatrists in the State of Nevada, said reports setting forth the results of their examinations of said defendant having previously been filed herein, the court finds the defendant, DAVID EDWARD RIGGINS, to be in possession of sufficient mental faculties to aid and assist counsel in his defense;

WHEREFORE, upon good cause showing:

IT IS HEREBY ORDERED that the defendant, DAVID EDWARD RIGGINS, be, and he is hereby, declared legally sane and competent to stand trial.

IT IS FURTHER ORDERED that this matter shall be, and it is hereby, remanded to the Justice Court of Las Vegas Township for further proceedings.

DATED this 18th day of MARCH, 1988.

/s/ Illegible
DISTRICT JUDGE

/s/ Bill A. Berrett
BILL A. BERRETT
Deputy District Attorney

DISTRICT COURT

CLARK COUNTY, NEVADA

(Caption omitted in printing)

Illegible
CLERK

CASE NO. C81906

DEPT. NO. II

(Filed April 5, 1988)

INFORMATION

ROBBERY WITH USE OF A DEADLY WEAPON (Felony NRS 200.380, 193.165) and MURDER WITH USE OF A DEADLY WEAPON (Felony NRS 200.010, 200.030, 193.165)

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

REX BELL, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada informs the Court

That DAVID EDWARD RIGGINS the Defendant ___ above named, on or about the 20th day of NOVEMBER, 1987, at and within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did

COUNT I - ROBBERY WITH USE OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously take personal property including, but not limited

to, lawful money of the United States; men's coat; two (2) prescription vials in the name of PAUL WILLIAM WADE; one (1) set of car keys; and one (1) apartment key, from the person of PAUL WILLIAM WADE, or in his presence, by means of force or violence, or fear of injury to, and without the consent and against the will of the said PAUL WILLIAM WADE, said defendant using a deadly weapon to-wit: a knife, during the commission of said crime.

COUNT II - MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law and with malice aforethought, wilfully and feloniously kill PAUL WILLIAM WADE, a human being, by stabbing at and into the body of the said PAUL WILLIAM WADE with a deadly weapon, to-wit: a knife.

REX BELL
DISTRICT ATTORNEY

BY /s/ Bill A. Berrett
BILL A. BERRETT
Deputy District Attorney

Names of Witnesses known to the District Attorney's Office at the time of filing the information are as follows:

AUSTIN, MARK
725 Sierra Vista
Las Vegas, Nv 89109

AUSTIN, THOMAS
3620 Lost Hills Dr.
Las Vegas, Nv 89122

BECKMAN, PETER FRANK
LVMPD BADGE# :212

BEZIAH, PATRICIA
2008 Monterey
Las Vegas, Nv 89104

CAMPBELL, MICHAEL K
LVMPD BADGE# :3080

CANTALAMESSA, LIYDA
2665 S Bruce
Las Vegas, Nv 89109

CASSELL, BILL
LVMPD BADGE# :3077

EDWARDS, KYLE LEE
LVMPD BADGE# :1005

FRANKS, PATRICK
LVMPD BADGE# :1345

GOOD, KAREN CHARLECE
LVMPD BADGE# :278

GOOD, RICHARD G
LVMPD BADGE# :806

GREEN, SHELDON
1704 Pinto Ln - Coroners
Las Vegas, Nv 89106

GRIFFIN, SAMUEL
Inmate - CCJ
Las Vegas, Nv

HOLLANDER, NINA DR
1704 Pinto Lane - Coroners
Las Vegas, Nv 89106

HORN, DAVID R
LVMPD BADGE# :1928

LEAVITT, ALRED B
LVMPD BADGE# :189

MAGEE, SHANE R
Inmate - CCJ
Las Vegas, Nv

MUMPOWER, FRED PATRICK
LVMPD BADGE# :372

NORMAN SHEREE L
LVMPD BADGE# :3110

PENDREY, LOWELL McKAY
3620 Lost Hills Dr.
Las Vegas, Nv 89122

REES, ROBERT
LVMPD BADGE# :2332

REYES, DAVID
1704 Pinto Ln - Coroners
Las Vegas, Nv 89104

RODERICK, ROBERT G
LVMPD BADGE# :211

WILLIAMS, KENNETH
Inmate - CCJ
Las Vegas, Nv

MOSER, M.E.
LVMPD BADGE# :1224

HALL, L.
LVMPD BADGE# :2549

SHEETS, J.
LVMPD BADGE# :697

GROOVER, K.
LVMPD BADGE# :904

FILLER, EDIE
2665 S. BRUCE# :279
Las Vegas, Nv

SIEFKER, N.
LVMPD BADGE# :3057

District Court, Clark County, Nevada

(Caption Omitted In Printing)

Psychiatric Evaluation by Jack A. Jurasky, M.D.

June 8, 1988

Mace J. Yampolsky, Esq.
520 So. Fourth St.
Las Vegas, NV, 89101

Re: Psychiatric Evaluation of: David E. Riggins
Case #: C 81906

Dear Sir(s):

David E. Riggins, 31, was seen for the second time on June 6, 1988 for a re-evaluation as requested by counsel. He was, in many respects, similar to the way he appeared during our first interview on February, 1988. He acknowledged me as well as the reasons for his being in jail and appeared to be well oriented to time, place, person, activity, and purpose. His memory functions also seemed intact.

As in February he was outwardly cooperative and responsive to my questions. However as we talked he acknowledged being actively hallucinatory hearing voices "from hell, these are evil spirits telling me to kill myself or someone else that I have to tell to be quiet. There are two evil spirits, one is Satan and the other is his assistant."

Riggins told me about his childhood and of how he and his siblings were abused by his father and stepmother. He also has epilepsy and has had seizures "for as long as I can remember." At present he is taking rather

large doses of Mellaril daily. Mellaril is a powerful antipsychotic drug which appears to be controlling the defendant without curing him. He is also being medicated with Dilantin for his seizures.

Riggins appears superficially competent to advise with counsel, give testimony, recall evidence, and to aid in his defense. However, I believe that he is actively psychotic, severely paranoid, and very dangerous to himself and others. He changes his story in many places but not to his defense or in any way offering an alibi. I don't think he realizes what he is saying and is not aware of contradictions. If taken off medication he would most likely regress to a manifest psychosis and become extremely difficult to manage. He was not taking medications of any type when he committed the homicide. Consequently I think he is not truly competent to assist in his defense. I am also of the opinion that on the day of the alleged offense of murder, he was not in possession of mental faculties sufficient to know right from wrong or to know he was doing a wrongful act. He was acting in a manner "to keep him (the victim) from killing more girls, and to protect myself . . . it was self-defense."

Sincerely,

/s/ Jack A. Jurasky, M.D.
Jack A. Jurasky, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

(Caption Omitted In Printing)

MOTION TO TERMINATE ADMINISTRATION OF MEDICATION

COMES NOW, the Citizen Accused, DAVID EDWARD RIGGINS, by and through his attorney, MACE J. YAMPOLSKY, ESQ., and respectfully moves this Court pursuant to the Fourteenth Amendment to the U.S. Constitution and Article 1, Section 8, of the Nevada Constitution, for an order terminating the State's administration of Mellaril, a mind altering drug, and Dilantin to the accused prior to and during his Trial on June 27, 1988.

This Motion is made and based upon the Points and Authorities attached hereto as well as the entire file on record with the Court.

DATED this 10 day of June, 1988.

By /s/ Mace J. Yampolsky
MACE J. YAMPOLSKY
Las Vegas, NV. 89101-6593
Attorney for Defendant

NOTICE OF MOTION

TO: REX BELL, CLARK COUNTY DISTRICT ATTORNEY:

TO: BILL A. BERRETT, DEPUTY DISTRICT ATTORNEY:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the

above entitled Court on the 20 day of June, 1988, at the hour of 9 AM., or as soon thereafter as council can be heard, in District Court, Department II.

DATED this 10 day of June, 1988.

By /s/ Mace J. Yampolsky
MACE J. YAMPOLSKY
520 So. 4th St.
Las Vegas, NV. 89101-6593
Attorney for Defendant

POINTS AND AUTHORITIES

I. THE STATE'S ADMINISTRATION OF THE ANTIPSYCHOTIC, MELLARIL, AND DILANTIN INVOLUNTARILY TO A DEFENDANT VIOLATES THAT DEFENDANT'S RIGHT TO PRESENT A FULL AND FAIR DEFENSE ON HIS OWN BEHALF.

Freedom of thought and speech is the matrix, the indispensable condition of nearly every other form of freedom. *Palko v. Connecticut*, 302 U.S. 319, 326, 58 S. Ct. 149, 82 L.Ed. 288 (1937). The state's administration of mind altering drugs directly affects this freedom and is in direct conflict with due process of law. *State v. Maryott*, 6 Wash. App. 96,492 P.2d 239, 240 (1971).

Article 1 Section 8 of the Nevada Constitution affords an accused the right to establish any fact relevant to the protection of his property or liberty, *Wright v. Cradlebaugh*, 3 Nev. 341 (1867), *State v. Fouquette*, 65 Nev. 505, 221 P.2d 404 (1950) *cert. denied*, 341 U.S. 932, 71 S. Ct. 799, 95 L.Ed.2d 1361 (1951). The defendant's apparent mental capacity at the time of trial should not be under the control of his adversary.

Moreover, courts have held that the Fourteenth Amendment to the U.S. Constitution protects an individual from having his mental capacity altered by the State at the time of trial. *State v. Maryott*, 6 Wash. App. 96, 99, 492 P.2d 239, 242 (1971), *In Re Prey*, 133 Vt. 284, 336 A.2d 174, 177.

Our legal system is an adversary process. However, the *Maryott* court noted that "[w]hen the state is allowed, during the time of trial, to administer drugs to a defendant, contrary to his will, it is able to affect the judgment and capacity of its own adversary". *Maryott*, at 241.

When mental competence is at issue, the right to offer testimony involves more than mere verbalization. *Id.* at 242. The demeanor in court of one who has raised the issue of his sanity is of probative value to the trier of fact. *United States v. Chandler*, 72 F. Supp. 230 (D.C. Mass. 1947). Furthermore, due process of law mandates that a jury, called to determine the issue of a defendant's sanity, be exposed to the true mental state of the defendant.

A court confronted with such a violation of due process stated;

> "[T]he jury never looked upon an unaltered, undrugged Gary Prey at any time during the trial. Yet his deportment, demeanor, and day-to-day behavior during that trial, before their eyes, was a part of the basis of their judgment with respect to the kind of person he really was, and the justifiability of his defense of insanity" *In Re Prey*, 133 Vt. 284, 336 A.2d 174, 176 (1975).

The court went on to note that, "[i]n fact it may well have been necessary, in view of the critical nature of the

issue, to expose the jury to the undrugged, unsedated Gary Prey." *Id.* at 177.

Furthermore, the Nevada Supreme Court has held that a defendant who has been adjudged competent to stand trial cannot be compelled to take medication prior to and during trial notwithstanding the district court's order. *Ford v. District Court*, 97 Nev. 578, 579, 635 P.2d 578 (1981).

II. THE COMPETING STATE INTEREST OF CONDUCTING A SAFE AND ORDERLY TRIAL DOES NOT OVERRIDE DAVID EDWARD RIGGINS RIGHT TO A FAIR TRIAL.

The United States Supreme Court has held that a defendant's fundamental Sixth Amendment right to be present may be limited or lost when his conduct made an orderly trial impossible and that after a defendant has been guilty of outrageous conduct in court, he may be cited for contempt, bound and gagged, or removed from the courtroom depending on which is the fairer, more reasonable way. *Illinois v. Allen*, 397 U.S. 337, 347, 90 S. Ct. 1057, 1063, 25 L.Ed. 353 (1970).

One Court denied a defendants due process argument on appeal proffering two basic reasons. First, the court argued Thorazine, a drug which suppresses emotional brain activity, was not mind altering, Second, the court noted that although there was a due process issue it was mute because the defendant was given ample opportunity to tell the jury that he was being given Thorazine and he declined to do so. *State v. Jojola*, 89 N.M. 489, 493, 553 P.2d 1296, 1299 (19**).

The case at bar can be readily distinguished from *Jojola*. First, the drug in question is not Thorazine. Mellaril is a mind altering drug which acts on the patient "through its inhibitory effect on psychomotor functions". *Physician's Desk Reference*, 36th ed. 1982, p. 1681. Second, in this case the due process issue is being brought before this Court prior to trial, not on appeal.

Also, the guidelines of *Allen*, requires that a need to control be demonstrated at trial before it is imposed. DAVID ALLEN RIGGINS has done nothing to indicate that his presence, unfettered by Mellaril will in any interfere with the State of Nevada's legitimate interest in an orderly trial.

CONCLUSION

Based on the preceding Points and Authorities the Defendant moves this Court to allow him to appear at his trial without being under the influence of drugs in order to insure his right to a fair trial.

Respectfully submitted,

/s/ Mace J. Yampolsky
MACE J. YAMPOLSKY
Las Vegas, NV. 89101-6593
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

(Caption Omitted In Printing)

NOTICE OF INSANITY DEFENSE

TO: REX BELL, CLARK COUNTY DISTRICT ATTORNEY

TO: BILL A. BERRETT, DEPUTY DISTRICT ATTORNEY

DAVID E. RIGGINS, by and through his undersigned counsel, MACE J. YAMPOLSKY, ESQ., does hereby give notice that he does intend to rely upon the affirmative defense of insanity in that, on the date and at the time of the commission of the offense, the defendant was insane and did not know the nature and quality of his act.

Submitted this 10 day of June, 1988.

/s/ Mace J. Yampolsky
MACE J. YAMPOLSKY
520 So. 4th St.
Las Vegas, NV. 89101-6593
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

(Caption Omitted In Printing)

CASE NO. C81906

DEPT. NO. II

OPPOSITION TO MOTION TO TERMINATE MEDICATION REQUIRED TO MAINTAIN LEGAL COMPETENCY; STATE'S MOTION TO HAVE THE DEFENDANT EXAMINED BY TWO PSYCHIATRISTS IN ORDER TO DETERMINE SANITY

DATE OF HEARING:7-14-88
TIME OF HEARING: 9:00 A.M.

COMES NOW, the STATE OF NEVADA, through REX BELL, District Attorney, by and through BILL A. BERRETT, Deputy District Attorney, and files this Opposition to Motion to Terminate Medication Required to Maintain Legal Competency; State's Motion to Have the Defendant Examined by Two Psychiatrists in Order to Determine Sanity.

Said Response is made and based upon all the files, papers and pleadings on file herein, Points and Authorities in support hereof, as well as arguments of counsel, if deemed necessary by this Court.

DATED this 28th day of June, 1988.

REX BELL
DISTRICT ATTORNEY

BY: /s/ Bill A. Berrett
BILL A. BERRETT
Deputy District Attorney

ARGUMENT

I

THE M'NAGHTEN RULE CONTINUES TO BE THE LAW CONCERNING SANITY IN NEVADA.

NRS 193.190 provides:

> "In every crime or public offense there must exist a union, or joint operation of act and intention, or criminal negligence."

NRS 193.200 provides:

> "Intention is manifested by the circumstances connected with the perpetration of the offense, and the *sound mind* and discretion of the person accused." (emphasis added).

NRS 193.210 provides:

> "A person shall be considered of sound mind who is neither an idiot nor lunatic, nor affected with insanity, and who has arrived at the age of 14 years, or before that age, if such person knew the distinction between good and evil."

In Nevada in 1889, in the case of *State of Lewis*, 20 Nev. 333 (1889), the Supreme Court approved and adopted the "right and wrong" test patterned after the English M'Naghten rules pronounced by English judges in 1843. The *Lewis* court stated the following as cited in *Sollars v. State*, 73 Nev. 248, 250 (1957):

> "To establish a defense on the ground of insanity, it must be clearly proved that at the time of committing the act the defendant was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act that he was doing, or, if he did know it

that he did not know he was doing what was wrong."

In *Williams v. State*, 85 Nev. 169 (1969), the Nevada Supreme Court again held that the M'Naghten case is the rule of criminal responsibility in Nevada. The *Williams* court further cited the law as set forth in *State v. Lewis*, supra. In *Williams*, at p. 173, the court noted:

> "[I]f a man has capacity and reason sufficient to enable him to distinguish right from wrong as to the particular act in question, and has knowledge and consciousness that the act he is doing is wrong and will deserve punishment, he is, in the eye of the law, of *sound mind and memory*, and should be held criminally responsible for his acts . . . " (emphasis added).

The M'Naghten rule continues to be the accepted standard in Nevada for determination of mental sanity. *Poole v. State*, 97 Nev. 175 (1981); *Clark v. State*, 95 Nev. 24 (1979).

"Insanity is an affirmative defense which the accused, who is presumed sane, must prove by a preponderance of the evidence." *Ybarra v. State*, 100 Nev. 167, 172 (1984). Sanity is not an element of the offense which the prosecutor must plead and prove. *Id.* at p. 172; *Clark v. State*, 95 Nev. 24, 28 (1979).

This history, concerning the M'Naghten standard, is pertinent in the following discussion because the Nevada insanity standard patterned after M'Naghten is not as liberal as those jurisdictions which have accepted other insanity standards. When discussing forced medication during insanity defense cases it is critical to understand the appropriate legal standard one is referring to. For

example, in *Commonwealth v. Louraine*, 453 N.E.2d 437 (Mass. 1983), the Massachusetts Supreme Judicial Court noted that the Massachusetts insanity standard is "much broader [than the M'Naghten test] and relieves the defendant of criminal responsibility if, at the time of the conduct, as a result of mental disease or defect, he lacked substantial capacity to conform his conduct to the requirements of the law." They further noted that the demeanor of the defendant is "more relevant" to their broader insanity concept. Therefore, in Massachusetts they view the defendant's demeanor in court as much more sacred under an insanity defense than jurisdictions which follow the M'Naghten rule. Thus, jurisdictions which do not follow the M'Naghten rule should be carefully examined in the following context.

II

THE DEFENSE MOTION TO ORDER THE TERMINATION OF MEDICATION SHOULD BE DENIED

The defense seeks to have this court order the termination of medication to the defendant prior to and during his trial. The defense indicates that the defendant is presently being administered the drugs Mellaril and Dilantin. He alleges, without affidavit, that these drugs are being administered to the defendant, apparently against his will.

Initially, it should be noted that on January 4, 1988, the defendant was held to answer in District Court conditionally in order that he could be examined as to his sanity by psychiatrists. On March 9, 1988, after being examined by three psychiatrists, the defendant was found

competent to stand trial. The psychiatric reports which are in possession of the State are attached hereto as an Exhibit and are incorporated herein by this reference. These reports include a January 15, 1987, report from Dr. R. Patel of Alhambra, California; a February 8, 1988 report of Dr. Franklin Master; a February 9, 1988, report of Dr. Jurasky; and a second report of Dr. Jurasky dated June 8, 1988. The State is under the belief that another report exists which is not yet in our possession – that report being from Dr. O'Gorman. This report was used to determine the defendant's competence on March 9, 1988.

The report of Dr. Patel in Alhambra, California, indicates that the defendant was diagnosed as suffering from paranoid schizophrenia and was treated while hospitalized with Haldol for hallucinations.

Dr. Master's February 8, 1988, report indicates that the defendant claimed the killing was justifiable. He even expressed sorrow for the killing. The defendant told Dr. Master that he was taking 450 mg. a day of Mellaril and had been using it for six (6) years. He reported seeing Dr. O'Gorman here in Las Vegas as well as Dr. Lutkey in Rosemead, California and a Dr. White in Alhambra, California. He concluded that the defendant knew right from wrong at the time of the crime.

Dr. Jurasky found the defendant incompetent to stand trial because he suffered from psychotic mental illness. This first report was from a February 9, 1988, interview.

On June 6, 1988, Dr. Jurasky again interviewed the defendant. This interview is reported in the June 8, 1988 report. Dr. Jurasky reports the defendant was taking large

doses of Mellaril daily which is a powerful anti-psychotic drug which appeared to control the defendant. The defendant was also taking Dilantin for seizures. Dr. Jurasky stated that if taken off the medication, the defendant would likely regress to a manifest psychosis.

As the State does not at present have the report of Dr. O'Gorman, we will need to wait until the scheduled evidentiary hearing in order to present his medical opinion.

NRS 178.400 provides:

> "1. A person may not be tried, adjudged to punishment or punished for a public offense while he is incompetent.
>
> 2. For the purposes of this section, "incompetent" means that the person is not of sufficient mentality to be able to understand the nature of the criminal charges against him, and because of that insufficiency, is not able to aid and assist his counsel in the defense interposed upon the trial or against the pronouncement of the judgment thereafter."

NRS 178.405 provides:

> "When an indictment or information is called for trial, or upon conviction the defendant is brought up for judgment, if doubt arises as to the competence of the defendant, the court shall suspend the trial of the indictment or information or the pronouncing of the judgment, as the case may be, until the question of competence is determined."

Doubt as to the sanity of a defendant means doubt in the mind of the trial court rather than counsel or others. It

lies in the discretion of the trial judge. *Williams v. State*, 85 Nev. 169, 174 (1969); *Hollander v. State*, 82 Nev. 345 (1966).

"A conviction of an accused while legally incompetent violates dues [sic] process and must be set aside." *Miller v. State*, 89 Nev. 561, 563 (1973); *Krause v. Fogliani*, 82 Nev. 459 (1966). Since it is critical for due process and statutory requirements to only try and convict competent defendants, it is essential that all parties involved take steps to assure that the defendant is now competent and that he will remain competent throughout the trial period.

Viewing the facts as thus far presented, it is clear that in order for the defendant to remain in such a condition that he can assist counsel at trial he must continue to receive proper medication. Since the defendant must be competent to stand trial a defendant might theoretically postpose [sic] indefinitely his trial on the merits if he were to be permitted to legally refuse the medication which is deemed essential for him in order for him to maintain his competence.

While this issue has not been closely analyzed in Nevada, many jurisdictions have discussed this exact issue in depth. This issue has been referred to as "chemical competence," or "synthetic sanity". Briefly stated that issue is: Does the state have the right to compel a defendant, over objection, to take drugs which affect his mental or physical ability at trial when the defendant's mental ability to commit the crime charged is at issue?

A secondary issue examines the purpose for which the medication is administered. Is the medication given in order to control the defendant's behavior in court, or is it

to enable the accused to maintain his competency to stand trial?

A third issue surfaces: Can an accused who must receive medication in order to maintain his competence waive his right to not be tried while incompetent? Other issues come into discussion also. What was the medical condition of the "Synthetically sane" defendant at the time of the criminal offense? Was the accused on medication when the offense occurred? Is the jury permitted to see the defendant in the same medical state as he appeared at the time of the offense as a matter of due process? And finally, what solutions or remedies are available in the stated situations?

First, can the State compel an accused over his objection to take medication when he would be legally incompetent without that medication when the mental state (insanity) of the accused is at issue? The cases which have dealt with this issue discuss a number of tranquilizing and anti-psychotic drugs including: Haldol, Thorazine, Stelazine, Lithium, Valium, Sparine, Librium, Chloral Hydrate, Loxatain, Mellaril and Aventyl.

The weight of authority suggests that the issue of medications in order to assure mental and legal competency is permissible. In some cases certain safeguards are suggested. In *State v. Jojola*, 553 P.2d 1296 (N.M. Ct. App. 1976), the defendant was competent for trial as long as he was medicated with Thorazine. The facts state:

> "Defendant testified that he did not wish to go to trial while using Thorazine. His request was denied. He claims the trial court violated his right to due process of law in not permitting

> defendant to be tried when he was not under the influence of Thorazine. This due process claim has two parts: (1) the absolute right to be tried when not being medicated with Thorazone, and (2) the right not to be so tried because his trial demeanor was relevant to this theory of defense."

Medical testimony indicated that one who was administered Thorazine was sedated emotionally more than cognitively. Thus the defendant had the ability to make decisions and communicate with others. The *Jojola* court concluded at p. 1299:

> "In the absence of evidence that defendant's thought processes or the contents of defendant's thoughts were affected by the Thorazine, we hold that defendant was not denied due process because the trial took place while he was being medicated with Thorazine."

In *State v. Law*, 244 S.E.2d 302 (S.Car. 1978), the defendant was involuntarily medicated on psychotropic medications including Haldol and Loxatain. Among other claims he alleged that because the medication affected his demeanor, his insanity defense was undermined. The court held at p. 306:

> "The consensus of the medical testimony at both the competency hearing and trial indicated that the psychotropic medications had positive effects, reversing the active state and allowing him to function in a more rational manner. While it is true the medications do affect cognitive and communicative processes, the effect is beneficial in that it enabled the appellant to effectively exercise the very rights he asserts he was denied. It is reasonable to conclude from

> the medical testimony that the medications enabled the appellant to assist counsel in an effective manner. We find nothing in the record that would justify a contrary conclusion."

The court in *State v. Law*, supra, further held at p. 307:

> "Counsel for the appellant apparently takes the position that under no circumstances can medication be administered a defendant without his consent. They contend that such would be violative of his bodily integrity. We do not feel that such an absolute right exists. *It is our view that medication may be administered without the consent of a defendant under compelling circumstances, including those where the medication is necessary to render a defendant competent to stand trial.* We are of the opinion that such necessity would constitute a compelling state interest justifying infringement upon the right to bodily integrity. However, such a practice should be sparingly used with prior notice to defense counsel." (emphasis added).

In *Ake v. State*, 663 P.2d 1 (Okl. Cr. 1983), the defendant was competent only if medicated. The court upholding the treatment held:

> "Psychopharmaceutical restoration of persons to a state of normality is not an uncommon practice in modern society. If a defendant may be rendered competent to assist in his defense through the use of medication, it is in the best interests of justice to afford him a speedy trial."

In *United States v. Hayes*, 589 F.2d 811 (5th Cir. 1979), the defendant was given large doses of Aventyl (an antidepressant) and Mellaril (an anti-psychotic drug) in order

to maintain his competence to stand trial. The court noted at p. 823:

> "Appellant Hayes argues that a finding of 'incompetence but for drug maintenance' precludes a finding of competence to stand trial. But this argument is akin to declaring comatose all those diabetics who, but for periodic insulin injections, would lapse into coma. As noted by the court-appointed psychiatrist, 'there are many people who are maintained on moderate to sometimes very large amounts of tranquilizers in order that they may have jobs and function in society'. . .
>
> Once it is determined that he is competent to stand trial, the method of achieving that competence is of minor import. This is not to imply that drug maintenance is irrelevant in determining competency. Rather, all factors relating to perception and facility are to be considered. However, once it is determined that the accused has the requisite mental capacity, his method of maintaining that capacity is significant only in the area of continued competency throughout the proceedings."

In *State v. Hayes*, 389 A.2d 1379 (N.H. 1978), the trial court transferred questions to the New Hampshire Supreme Court regarding compelling an accused to be under psychotropic medication during trial. The court held at p. 1382:

> "Our answer to the first question is that the trial court may compel the defendant to be under medication at least four weeks prior to trial if the jury is instructed about the facts relating to the defendant's use of medication and if at some time during the trial, assuming the defendant so requests the jury views him without medication for as long as he is found to have been without it at the time of the crime."

In *Mines v. Florida*, 390 S.2d 332 (Fl. 1980), the defendant was "medically competent" during trial. The court held at p. 335:

> "The fact that appellant's competency is the result of approved medical treatment and medical science does not invalidate that finding of competency. To hold as suggested by appellant's counsel would mean that an individual with a mental disorder which could be controlled by medical science could not be tried for a criminal offense regardless of his ability to comprehend the nature of the proceedings and to assist counsel in his own defense."

In *State v. Stacy*, 556 S.W.2d 552 (Cr. App. Tenn. 1977), the court found the accused "medically competent" for trial. The decision analyzed many of the existing relevant cases and noted at p. 558:

> "Psychopharmaceutical restoration to sanity for the mentally incompetent patient-defendant is a medical reality for the overwhelming majority of such individuals. The courts have recognized this advancement of science in their decisions. Although the judicial system should continue to be concerned with untoward influence of drugs upon the defendant's mental competency to stand trial, nevertheless, many courts have recognized the advances in psychiatric treatment in their decisions on present sanity. The trend in trial courts is to require the drug-influenced normalized defendant to stand trial as early as

possible even though he still requires continuing psychotropic medication to retain his mental competency to stand trial."

The *Stacy* court further noted at p. 559:

> "The soundness of our ruling can best be illustrated by a reversal of the position of the parties. That is, if the State was alleging that Stacy was incompetent to stand trial, which it would have the right to do under existing law, but Stacy insisted that he be tried on the merits and could show that he would be competent by taking tranquilizing medication, then unquestionably we would hold that he would have the right to be tried at his insistence, and it would be error not to proceed with his trial. Thus, we think the State has the same right to insist that Stacy be tried on the merits of the case so long as it can be shown that the medication administered will render him mentally competent, will not affect his health, and does not preclude him from receiving a fair trial."

The second issue is: What is the purpose for which the medication is administered? In *State v. Maryott*, 492 P.2d 239 (Wash. App. 1971), it was held improper for drugs to be administered to the defendant by the jailers for the sole purpose of controlling the defendant's behavior in court. The *Maryott* court noted, however, that there were some instances where medication of defendants may be required. Also, it should be noted that in *Maryott*, medication was not necessary to maintain the defendant's competency.

The third issue is thus stated: Can an accused who is medically treated in order to remain competent waive his

right to go to trial while competent? Can he voluntarily decide to be insane while being tried? While some jurisdictions may accept this absurd situation, Nevada by statute has made competence a jurisdictional prerequisite for trial. NRS 178.400(1) clearly states: "A person *may not* be tried, adjudged to punishment or punished for a public offense while he is incompetent." (emphasis added).

Possible solutions to some of the issues presented include allowing expert testimony concerning the effect of the various medications which the defendant has taken. If possible and/or practical the defendant could be presented before the jury in the condition as at the crime's occurrence. This is improbable here as the medical reports indicate that the defendant had recently ingested cocaine shortly before the murder. Conflicts also exist as to when the defendant started taking the Mellaril. One report indicates he had taken it for the previous six (6) years.

The defense relies upon the case of *In Re Pray*, 336 A.2d 174 (Vt. 1975). In *Pray*, a post-conviction proceeding, the defendant at trial was medically sedated. Although the defense relied upon an insanity defense, the State failed to explain the effects of the medication on the defendant's trial behavior. Since the jury had no information concerning the administration or effect of the drugs the case was reversed.

The defense also relies upon *Ford v. District Court*, 97 Nev. 578 (1981). In *Ford*, the Supreme Court simply held that the District Court exceeded its jursidiction [sic] by enforcing a prior court order covering a period when Ms. Ford was committed for treatment. The District Court

acted in excess of its authority by enforcing an order mandated while the defendant was incompetent and there was no showing that continued medication was necessary to maintain competency.

III

THE STATE MOVES THE COURT FOR AN ORDER AUTHORIZING THE EXAMINATION BY TWO PSYCHIATRISTS OF THE DEFENDANT IN ORDER TO EVALUATE HIS SANITY.

As the defendant intends to rely upon a defense of insanity, the State seeks an appropriate court order to have the defendant examined in order to properly prepare for his insanity defense.

DATED this 28th day of June, 1988.

Respectfully submitted,

REX BELL
DISTRICT ATTORNEY

BY: /s/ Bill A. Berrett
BILL A. BERRETT
Deputy District Attorney

(Acknowledgment Omitted In Printing)

DISTRICT COURT

CLARK COUNTY, NEVADA
(Filed Jul. 11 3:16 PM '68)
(Illegible)
CLERK

(Caption Omitted In Printing)

RESPONSE TO OPPOSITION TO MOTION TO TERMINATE UNCONSENTED TO ADMINISTRATION OF MEDICATION; OPPOSITION TO MOTION TO HAVE THE DEFENDANT EXAMINED BY TWO PSYCHIATRISTS IN ORDER TO DETERMINE SANITY

DATE OF HEARING: 7-14-88
TIME OF HEARING: 9:00 AM

COMES NOW, the Citizen Accused, DAVID EDWARD RIGGINS, by and through his attorney, MACE J. YAMPOLSKY, ESQ., and files this Response to Opposition to Motion to Terminate Unconsented to Administration of Medication; Opposition to Motion to Have the Defendant Examined By Two Psychiatrists in Order to Determine Sanity.

This Motion is made and based upon all the points and Authorities attached hereto, the entire file on record and any oral argument as may be presented by counsel at the scheduled hearing.

DATED this 8 day of July, 1988.

By /s/ Mace J. Yampolsky
MACE J. YAMPOLKSY, ESQ.
520 So. 4th St.
Las Vegas, NV. 89101-6593
Attorney for Defendant

I

STATEMENT OF THE CASE

The State introduces its Opposition to the Motion to Terminate Medication on the soapbox of the M'Naghten rule. It has never been the posture of the defense to undermine the propriety of that rule. M'Naghten is and has ever been the law in Nevada and the "right and wrong" test stemming from that rule is the proper one.

Nor does the Defense challenge the propriety of administering drugs to render a defendant competent to stand trial and to adequately assist in his defense. It is however, the Defendant's contention that if he is not allowed to fully present evidence to the jury pertaining to his mental condition at the time of the alleged offense *i.e.*, to permit the jury to observe him free from the effects of the powerful anti-psychotic, Mellaril, he will be denied the fundamental guarantees of due process.

II

THE DEFENDANT HAS A CONSTITUTIONALLY GUARANTEED RIGHT TO HAVE THE JURY VIEW HIM AT SOME TIME DURING THE TRIAL FREE FROM THE EFFECTS OF THE POWERFUL ANTI-PSYCHOTIC MELLARIL

Article I Section 8 of the Nevada Constitution not only mandates that a party be properly brought into court but that a defendant shall also have the opportunity when in court to establish any fact which would potentially protect himself or his property. *Wright v. Cradlebaugh*, 3 Nev. 341 (1867), *State v. Fouquette*, 65 Nev. 505,

221 P.2d 404 (1950). The Defendant's actual mental capacity is one such fact. This right is made more compelling when a defendant is relying on a defense of insanity.

Few rights are more fundamental in our jurisprudence that of an accused "to present . . . [his] version of the facts." *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct. 1920, 1923, 18 L.Ed.2d 1019 (1967). This right is guaranteed not only by the Sixth and Fourteenth Amendments to the Federal Constitution, but also by Article 1 Section 8 of the Nevada Constitution.

The Ninth Circuit Court of Appeals has held that a defendant is entitled to place before the jury any evidence which is at all probative of his mental condition. *United States v. Hartfield*, 513 F.2d 254, 259-60 (9th Cir. 1975). *See also, United States v. Ives*, 609 F.2d 930, 932-33 (9th Cir. 1980); *United States v. Brawner*, 153 U.S. App. D.C. 1, 471 F.2d 969 (D.C. Cir. (1972). Further, in Justice Blackmun's words a defense may present "all possibly relevant evidence" bearing on cognition, volition and capacity. *Pope v. United States*, 372 F.2d 710, 736 (8th Cir. 1967).

Moreover, it is an established rule that, when the defendant's sanity is at issue, the trier of fact is entitled to consider the defendant's demeanor in court. *Commonwealth v. Devereaux*, 257 Mass. 391, 395, 153 N.E. 881 (1926); *State v. Hayes*, 118 N.H. 458, 462, 389 A.2d 1379 (1978); *In Re Prey*, 133 Vt. 253, 257-58, 336 A.2d 174 (1975); *State v. Maryott*, 6 Wash. App. 96, 101, 492 P.2d 239 (1971). 4 J. Wigmore, Evidence Sec 1160 (Chadbourn rev. ed. 1972). *See, United States v. Chandler*, 72 F. Supp. 230, 238 (D. Mass. 1947). *Cf, State v. Griffin*, 99 Ariz. 43, 406 P.2d

397 (1965) (To resolve issue of insanity defense it is necessary for the jury to have the entire picture of the defendant); *People v. Wetmore*, 149 Cal. Rptr. 265, 583 P.2d 1308, (1978) (Defendant cannot constitutionally be denied the right to present probative evidence regarding criminal responsibility). *See also, Colorado v. Hendershott*, 103 S.Ct. 1232, 459 U.S. 1225, 75 L.Ed.2d 466 (1982); *People v. Wright*, 648 P.2d 665 (1982). Thus, "when mental competence is at issue, the right to offer testimony involves more that mere verbalization," *State v. Maryott, supra*, 6 Wash. App. at 101, but includes the defendant's right to offer to the jury his demeanor in a state similar to that one he was in at the time of the alleged offense.

In this case it is not possible to permit the Defendant to ingest cocaine during trial. However, this fact alone does not justify refusing to permit the defendant to be free from the effects of Mellaril. At some time during trial, to protect Defendant's rights, the jury must observe his unadulterated demeanor in the courtroom if he so requests and was not under the influence of the drug in question at time of the offense. *State v. Hayes*, 389 A.2d 1379 (N.W. 1978).

When sanity is at issue the jury are likely to assess the weight of different evidence with reference to the defendant's demeanor. Moreover, if the defendant appears calm and controlled at trial, the jury may discount testimony that the Defendant lacked, at the time of the crime, the capacity to tell right from wrong. This tendency may render also valueless the defendant's right to testify on his own behalf. *See, In Re Prey, supra.*

The State's position that the ability to present expert testimony to the jury concerning the effects of Mellaril is an adequate substitute for the "real thing" is without merit. At best, such testimony would serve only to mitigate the unfair prejucide which would accrue to the Defendant as a consequence of his controlled outward appearance. It cannot compensate for the positive value to the Defendant's case of his own demeanor in an unmedicated condition. Moreover, "[i]f the state may administer tranquilizers to a defendant who objects, the state then is, in effect, permitted to determine what the jury will see or not see of the defendant's case by medically altering the attitude, appearance and demeanor of the defendant, when they are relevant to the jury's consideration of his mental condition." *State v. Maryott, supra*, 6 Wash. App. at 102, 492 P.2d 239.

The state proffers the compelling position that pursuant to Nevada statutory law a defendant cannot be convicted while incompetent. In contrast is Defendant's position that pursuant to the Federal Constitution and the Nevada State Constitution he should not be denied his right to admit evidence relevant to his theory of defense. Courts which have faced this issue have either availed a defendant of this right or, while permitting the administration of medication in the interest of continuing competence, have given great deference to this fundamental constitutional right.

The State cites *State v. Hayes*, 389 S.2d 1379 (n.H. 1978), to support their position. The defense wholeheartedly agrees with the logic of the *Hayes* court. The court held at p. 1382:

> "[T]he trial court may compel the defendant to be under medication at least four weeks prior to trial if the jury is instructed about the facts relating to the defendant's use of medication *and if at some time during the trial, assuring the defendant so requests, the jury views him without medication of as long as he is found to have been without it at the time of the crime.*" (Emphasis added).

Defendant's Motion is not made to render himself incompetent to stand trial. It is not made to have the Defendant taken off Mellaril immediately thus posing a problem for his jailers. It is made solely for evidentiary purposes. It is made pursuant to Constitutional mandate and considerable case law.

In fact only one case cited by the state denies a defendant the right to present evidence in the manner at issue. *State v. Jojola*, 553 P.2d 1296 (n.M. Ct. App. 1976). The court held that since they were not shown any evidence that Thorazine affected defendant's thought processes or the contents of defendant's thoughts he was not denied his Due Process rights. As noted in both Defendant's Motion and State's Opposition, Mellaril is a "powerful anti-psychotic" which does in fact control in part the defendant's thought processes.

The state also proffers the position that because Nevada follows the M'Naghten rule evidence as to the Defendant's mental state should be devalued. This proposal seems almost preposterous at first blush.

If a Defendant is being held to a stricter standard then certainly his opportunity to meet this standard should not be depreciated as a matter course. Ultimately, a Defendant's right to present evidence on his own behalf

is no less sacred in a jurisdiction that adheres to the M'Naghten than in a jurisdiction following a more liberal approach. Moreover, in Nevada, the concept that a defendant has the right to freely present any evidence relevant to the protection of his person or property is constitutionally protected. *See, supra.*

The issue of the evidentiary value of a defendant's demeanor before the jury has been considered in states where M'Naghten is law. *See, Maryott v. State, supra.*

III

DEFENSE OPPOSES STATE'S MOTION TO HAVE THE DEFENDANT EXAMINED BY TWO PSYCHIATRISTS

The Defendant, at this time intends to rely on the testimony of one psychiatrist in presenting the insanity defense. The Defendant would not oppose the authorization of one psychiatrist's examination for the state.

The Defendant is an indigent. He cannot afford to have another examination without the Court's directive. In the interest of fundamental fairness and justice the Defendant contends that expert testimony should be had on an equal basis. This, if the Court feels it is appropriate to authorize two examinations by state's experts then the court should also authorize an additional psychiatrist's examination by an expert chosen by the Defense.

CONCLUSION

WHEREFORE counsel for the Defendant, MACE J. YAMPOLSKY, ESQ, requests that this Court grant his Motion to Terminate Administration of Mellaril for a

period of time during trial for evidentiary purposes and deny State's Motion to Have Defendant Examined by Two Psychiatrists To Determine Sanity.

DATED this 8 day of July, 1988.

Respectfully submitted,

/s/ Mace J. Yampolsky
MACE J. YAMPOLSKY, ESQ.
520 So. 4th St.
Las Vegas, NV. 89101-6593
Attorney for Defendant

(Acknowledgment Omitted In Printing)

District Court

CLARK COUNTY, NEVADA

(Caption Omitted In Printing)

ORDER

DATE OF HEARING 7-14-88

TIME OF HEARING 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 14th day of July 1988, the defendant being present, represented by MACE YAMPOLSKY, the plaintiff being represented by REX BELL, District Attorney, through BILL A. BERRETT, Deputy District Attorney, and the matter having been submitted by the parties and taken under advisement by the Court,

IT IS HEREBY ORDERED that defendant's motion to Terminate Medication Required to Maintain Legal Competency shall be, and it is, denied.

DATED this 28 day of July, 1988.

/s/ Jack L. (illegible)
DISTRICT JUDGE

/s/ Bill A. Berrett
BILL A. BERRET
Deputy District Attorney

DISTRICT COURT

CLARK COUNTY, NEVADA

Case No. C81906 Dept. No. II

(Caption Omitted In Printing)

JUDGMENT OF CONVICTION

Whereas, on the 11th day of April, 1988, Defendant DAVID EDWARD RIGGINS, entered a plea of Not Guilty to the crime of Count II – Murder With Use of a Deadly Weapon, NRS 200.010, 200.030, 193.165.

WHEREAS, the Defendant, DAVID EDWARD RIGGINS, was tried before a Jury and the Defendant was found guilty of the crime of Count II – Murder in the First Degree With Use of Deadly Weapon, in violation of NRS 200.010, 200.300 and 193.165, and the Jury Verdict was returned on or about the 15th day of November, 1988. Thereafter, the same trial Jury, deliberating in the penalty phase of said trial, in accordance with the provisions of NRS 175.552 and 175.554, found that there was one aggravating circumstance in connection with the commission of said crime, to-wit:

The Murder was committed while the Defendant was engaged, alone or with others, in the commission of or an attempt to commit or flight after committing or attempting to commit a robbery, burglary or kidnapping in the first degree.

That on or about the 17th day of November, 1988, the Jury unanimously found, beyond a reasonable doubt, that there were nominating circumstances sufficient to outweigh the aggravating circumstances or cimcumstances,

and determined that the Defendant's punishment should be death in the Nevada State Prison located at or near Carson City, State of Nevada.

THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this Judgment of Conviction as part of the record in the above entitled matter.

DATED this 28th day of December, 1988, in the City of Las Vegas, County of Clark, State of Nevada.

/s/ Paul (illegible)
DISTRICT JUDGE

IN THE SUPREME COURT OF THE
STATE OF NEVADA

DAVID E. RIGGINS,)
Appellant,) No. 19873
vs.)
THE STATE OF NEVADA,)
Respondent.)

OPINION

(Filed March 28, 1991)

By the Court, YOUNG, J.:

On November 20, 1987, appellant David Riggins rode with his roommate, Lowell Pendrey, to Paul Wade's apartment, where Pendrey waited outside while Riggins went in for about half an hour. Shortly after Riggins left Wade's apartment, Wade's girlfriend went to his apartment when she was unable to reach him by telephone. She found Wade dead on the floor with multiple stab wounds and a number of dog bites. Police arrested Riggins the next evening. He was charged with first degree murder and robbery, both with use of a deadly weapon. After being found competent to stand trial, Riggins pleaded not guilty and not guilty by reason of insanity. Following a four-day trial held in November 1988, Riggins was convicted by a jury of first degree murder and robbery, both with use of a deadly weapon. The jury sentenced Riggins to death.

Within a week of being incarcerated, starting in late November 1987, Riggins was put on Mellaril, an anti-psychotic drug. The medication was commenced because Riggins complained of hearing voices; he continued to be medicated through trial the following November, with increased dosages in December 1987, January, May, and July 1988. During February and March 1988 when Riggins was examined and found competent to stand trial, he was medicated with 450 mg. of Mellaril per day. At trial, Riggins was medicated with 800 mg. of Mellaril per day.

In June, defense counsel filed a motion to terminate administration of medication, arguing that medication during trial violated Riggins' right to present a defense and that Riggins had done nothing to demonstrate a need for medication. The State opposed the motion, contending that the medication was necessary to maintain Riggins' competency to stand trial. The court denied the motion following a hearing held in July.

On appeal, Riggins contends that his involuntary medication with antipsychotic drugs during the trial violated his Sixth Amendment right to a full and fair trial by depriving him of his right to present his natural demeanor to the jury as part of his insanity defense. Riggins also argues that the district court abused its discretion in denying his motion to terminate administration of medication. The State contends that the denial of the motion was within the discretion of the trial court and should not be disturbed on appeal absent a clear showing of abuse. *See, e.g.*, Sparks v. State, 96 Nev. 26, 30, 604 P.2d 802, 804 (1980).

The question whether forced medication during trial violates a defendant's constitutional right to present a defense is one of first impression in Nevada. Other states that have considered this question all agree that the accused's demeanor has probative value where his sanity is in issue. *See, e.g.*, Commonwealth v. Louraine, 453 N.E.2d 437 (Mass. 1983); State v. Law, 244 S.E.2d 302 (S.C. 1978). However, states are evenly divided over whether expert testimony about the effect of the medication can substitute for the jury's firsthand observation of the defendant's natural demeanor.

Those courts that have compelled medication have viewed the defendant's psychological makeup as evidence that can be explained to the jury. Accordingly, they have required that the jury be informed of the effect that the medication has on the defendant's behavior. *See, e.g., Law*, 244 S.E.2d 302. On the other hand, those courts that have upheld the defendant's right to be tried while unmedicated conclude that expert testimony may not substitute for firsthand observation of the defendant's natural demeanor. *See, e.g., Louraine*, 453 N.E.2d 437.

In this case, there was ample expert testimony regarding the effect that the Mellaril had on Riggins. After reviewing the differing decisions, we are persuaded that expert testimony was sufficient to inform the jury of the effect of the Mellaril on Riggins' demeanor and testimony. Accordingly, the district court did not abuse its discretion in denying the motion to terminate medication. Moreover, the denial of Riggins' motion to terminate medication did not deprive him of his rights to a full and fair trial and to present a defense. *Compare Law*, 244 S.E.2d at 306-307.

The jury's special verdict reveals that only one of the alleged aggravating circumstances was proved beyond a reasonable doubt: that the murder was committed while Riggins was engaged, alone or with others, in the commission of or an attempt to commit or flight after committing or attempting to commit a robbery, burglary, or kidnapping in the first degree. Riggins contends that the evidence was insufficient to establish burglary as an aggravating circumstance because there was no breaking and entering nor intent to commit a felony within Wade's house.

However, the instruction allowed the jury to find aggravation if Riggins was engaged in robbery *or* burglary. Because the jury found Riggins guilty of robbery during the guilt phase, they likely found that he committed the murder during the commission of the robbery, eliminating the necessity of establishing a breaking and entering with intent to commit a felony. We conclude that the jury's finding with respect to aggravation was supported by substantial evidence.

Riggins next contends that the voir dire violated his Sixth Amendment right to an impartial jury because the cursory questioning of the venire panel as a whole did not afford a reasonable assurance that individual prejudice would be revealed. Riggins also argues that the district court abused its discretion in denying his motion for individual sequestered voir dire.

In the designation of the record on appeal, Riggins' counsel designated "[a]ll pleadings and motions, the complete trial transcripts, *excluding voir dire*, and the Judgment of Conviction." (Emphasis added.) Thus, the

record does not contain a transcription of the voir dire. Nor does the record contain the State's oral opposition to the motion and the possible basis of the district court's ruling on sequestered voir dire because counsel did not designate transcripts of the hearing on the motion.

It is the responsibility of the objecting party to see that the record on appeal before the reviewing court contains the material to which they take exception. If such material is not contained in the record on appeal, the missing portions of the record are presumed to support the district court's decision, notwithstanding an appellant's bare allegations to the contrary. *See, e.g.*, State v. Zuck, 658 P.2d 162, 165-66 (Ariz. 1982); People v. Wells, 776 P.2d 386, 390 (Colo. 1989). Moreover, the scope and manner of voir dire examination is within the sound discretion of the district court and, on review, such discretion is accorded considerable latitude. Cunningham v. State, 94 Nev. 128, 130, 575 P.2d 936, 937-38 (1978) (quoting Oliver v. State, 85 Nev. 418, 424, 456 P.2d 431, 435 (1969) and Spillers v. State, 84 Nev. 23, 27, 436 P.2d 18, 20 (1968)). For the foregoing reasons, we reject appellant's assignments of error regarding the voir dire examination.

Riggins next contends that the district court abused its discretion in denying his motion for co-counsel. He maintains that the court's failure to appoint co-counsel deprived him of his constitutional right to the effective assistance of counsel. After reviewing the record, however, we conclude that the district court did not abuse its discretion, pursuant to NRS 260.060, in denying the motion for co-counsel. *See* Sechrest v. State, 101 Nev. 360, 368, 705 P.2d 626, 632 (1985).

Riggins also contends that the district court abused its discretion in admitting a number of photographs during the penalty phase. He contends that the photographs, which depicted various scenes from the victim's apartment after the homicide, were duplicative because expert testimony and photographs previously admitted during the guilt phase were sufficient to illustrate the State's theory of murder by torture. Further, he asserts that the photographs were gory and inflammatory, and unduly prejudiced him. The State contends that the photographs were relevant and admissible to show torture, one of the three aggravating circumstances alleged by the prosecution.

Pursuant to NRS 48.035(2), the trial judge has discretion to exclude relevant evidence if its probative value is substantially outweighed by considerations including needless presentation of cumulative evidence. Moreover, under NRS 48.035(1), relevant evidence is not admissible if the danger of unfair prejudice substantially outweighs the probative value of the relevant evidence. However, NRS 175.552 allows evidence during the penalty hearing that may ordinarily be inadmissible.

Without deciding whether the photographs admitted during the penalty hearing were duplicative, we conclude that, given the trial court's broad discretion and the provisions of NRS 175.552, there was no error in allowing the photographs into evidence.

Lastly, Riggins contends that the district court erred in allowing the State to cross-examine Lowell Pendrey, the sole defense penalty phase witness, regarding his alleged homosexual relationship with Riggins. Riggins

asserts that the court further erred in allowing the State's rebuttal witness to testify concerning a conversation she overheard regarding this alleged relationship. Riggins contends that this testimony inflamed the jury and unduly prejudiced him, requiring a new penalty hearing.

During cross-examination, Pendrey denied having a conversation in which he allegedly acknowledged that he and Riggins were homosexual lovers. The prosecution then called Ellen Bezian, sister of the victim's girlfriend, to rebut Pendrey's truthfulness. Over defense counsel's objection, the court first ruled that the State's effort to impeach Pendrey with questions about the conversation did not involve a collateral matter. Following two additional objections by defense counsel, the court ordered stricken the entire conversation, apparently finding the conversation too tenuous for impeachment purposes. The court then instructed the jury to disregard the conversation.

We conclude that the cross-examination of Pendrey was proper for purposes of showing possible bias. Therefore, we conclude that the district court did not err in initially allowing the prosecutor to question Bezian about the conversation.

In reviewing the overall record, we conclude that Riggins' contentions lack merit and that the sentence was not excessive, considering both the crime and the individual characteristics of the defendant. We hereby affirm his death sentence and the underlying convictions of first degree murder and robbery with use of a deadly weapon.

/s/ Young, J.
Young

We concur:
/s/ Mowbray, C.J.
Mowbray
/s/ Steffen, J.
Steffen

ROSE, J., concurring:

I am concurring with the majority because I would have preferred two points to have been better established by the record. First, the fact that Riggins needed to be on the prescribed drug; and second, that he could not adequately function if the medication were terminated.

When Riggins was arrested, he complained of hearing voices and having trouble sleeping. He told Dr. Edward Quass, a psychiatrist, that he had taken Mellaril before and it had helped him. After a ten minute examination, Dr. Quass prescribed 100 milligrams a day because, as he said, Riggins had been on the drug before. Dr. Quass increased the amount to 800 milligrams a day because Riggins continued to hear voices and requested an increase in the dosage.

The court would not permit Riggins to terminate the massive dosage of Mellaril prior to trial to determine if he could function without the drug. Instead, the court relied on what psychiatrists thought would happen if the medication were stopped. A better method to determine the effects of stopping the medication would be to actually do so, and observe the results on the defendant. This is especially true in this case where two of the psychiatrists opined that Riggins' psychosis was probably caused by

drug abuse; and if that were the case, terminating the drug would have no effect on his behavior. Since two of the four psychiatrists believe that the termination of Mellaril would have no effect on Riggins, he should have been given the opportunity to suspend the taking of it and let it be seen if it had an effect on his behavior.

No defendant should be involuntarily medicated during his trial unless it is truly necessary. This is especially true in a capital case where the defense is insanity. A defendant's right to have the jury observe his actions and demeanor should not be prevented unless it is absolutely required. One way to determine if it is necessary would be to suspend the taking of the medication and observe the defendant's behavior. This was not done with Riggins.

However, we previously held that when a defendant is involuntarily medicated during trial, we will review the entire record to determine whether he was denied a fair trial and whether the defendant's appreciation of the events of trial was diminished. Lizotte v. State, 102 Nev. 238, 720 P.2d 1212 (1986). From my review of the record, Riggins was not denied a fair trial and it is not shown that he lacked an appreciation of the trial. Two psychiatrists who had prescribed Mellaril for Riggins, Dr. Quass and Dr. O'Gorman, testified that they believed it was helpful to him. Additional psychiatric testimony established that Mellaril may have increased Riggins' cognitive ability and prevented him from dangerous behavior.

While a review of the entire record meets the standard we set in *Lizotte*, I would prefer a stronger showing

that the medication was absolutely necessary, and evidence establishing how the defendant behaved without it.

/s/ Rose, J.
Rose

SPRINGER, J., dissenting:

This case is another[1] in which we are faced with a novel legal issue presented by courtesy of modern medical science. It seems that the medical doctors are now quite capable of conjuring in their insane clients a sort of "synthetic sanity"[2] by infusion into their brains a class of drugs, called variously "pyschotropic," "neuroleptic," or "antipsychotic." These drugs have been in use for perhaps thirty years and are known to act chemically on the nerve cell receptors of the brain in a manner – sometimes referred to as a "chemical lobotomy" – which rather drastically alters the thinking processes, emotional responses, behavior and appearance of those whose brains have been "seized"[3] by these powerful drugs.

So powerful are these drugs that a highly mentally disturbed insane person can be made to appear perfectly sane. These drugs so well mask underlying mental disorders that persons who are agreed by all to be mentally

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[1] *See*, for example, McKay v. Bergstedt, 106 Nev. ___, ___ P. 2d ___ (Adv. Opn. No. 142, Nov. 30, 1990) (Springer, J., dissenting).

[2] State v. Hampton, 218 So.2d 311, 312 (La. 1969).

[3] The word "neuroleptic" denotes a "seizure" of the nerves of the brain.

incompetent and thus unfit to stand trial can be drugged into a mental state in which psychotic symptoms disappear. There is, however, a price to pay for this "neurolepsis." The synthetically sane defendant becomes mentally and emotionally inert and in a state of chemically induced tranquility.[4] Wildly psychotic persons frequently become docile and apathetic. The medical literature frequently uses the "zombie" to describe the appearance and behavior of neuroleptic patients. The synthetically sane personality is characterized by indifference to what is going on and by "boredom, lethargy, docility and purposelessness."[5]

My point is very simple: I do not think that these drugs should be *forced* down the throats of these defendants, thereby inducing an unnatural and unwanted state of consciousness, just so the state can bring them to "justice." Riggins pleaded with the trial court to leave him alone and not allow the state to drug him into being someone he was not. I think the court erred when it refused to give Riggins protection from state mind-control drugging.

More and more of these kinds of cases are coming to the attention of this court. The following illustrates a representative pattern of the way in which psychotics are often treated in the criminal justice system. The procedures, which I now outline, do not necessarily fit exactly the facts of this case, but they do show the kinds

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[4] These drugs used to be called "major tranquilizers."

[5] *See* Comment, *Madness and Medicine: The Forcible Administration of Psychotropic Drugs*, 1980 Wis. L. Rev. 497, 512.

of medical and legal procedures that give rise to my concern. Here is the kind of treatment that I am talking about:

> *Stage One*: An obviously mentally disturbed person commits a crime. Police necessarily disturbed person commits a crime. Police necessarily refer the person to8mental health professionals."
>
> *Stage Two*: Psychiatrists or psychologists see the arrestee and, seeing that the person is confused, out of contact with reality and suffering from delusions and vivid auditory or visual hallucinations, conclude that the person is suffering from psychosis and should be institutionalized for treatment. (At this time the doctors frequently are in agreement that the arrested person was psychotic at the time of the commission of the crime.)
>
> *Stage Three:* The psychotic person is placed in confinement where "treatment" is instituted by administering the mentioned "major tranquilizers." Pretty soon the "patient" is "zombified" to the extent that he or she is no longer ranting or raving and, although a little sleepy most of the time, looks to be as sane as you or I.
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> *Stage Four:* The then psychotic but synthetically same person is sent back to the criminal justice system with a doctor's certificate saying that the psychotic person is now sane and fit to stand trial.
>
> *Stage Five:* The synthetically sane zombie sits smilingly through the trial, listening indifferently to "experts" testify that he or she is presently mentally competent and was mentally competent at the time of committing the crime.

> The tranquilized defendant obligingly nods assent to whatever is being said.
>
> *Stage Six*. The jury understandably assumes that the defendant was as sane at the time of the crimes as he appears to be in court. The defendant is convicted. The drugs are withdrawn, and the psychotic state resumes.

I am hoping that this kind of drug abuse, this kind of intrusion into the inner sancta of human personalities will be seen for what it is, oppressive and violative of the human dignity of those who are forced to submit to the demands of the white-coated syringe bearers. For those who cannot see the outrage of this kind of mind control on its face, I will proceed now to cite legal authority for putting an end to these procedures.

Right to Appear and Defend

Forceful administration of these mind-altering drugs (particularly upon a person who has been declared legally sane[6]) is an interference with one's right to "appear and defend" against charges in a criminal case. With the use of these drugs medical science can now alter the chemical workings of the brain and radically interfere with one's emotional and thought processes. Before the advent of these drugs the United States Supreme Court was able to observe: "Freedom to think is absolute of its

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[6] In Ford v. District Court, 97 Nev. 578, 635 P.2d 578 (1981), this court, in issuing a writ of mandamus, stated that the trial court had exceeded its jurisdiction when it ordered a competent defendant to submit to the administration of drugs. One would think that the ruling in *Ford* was controlling in this case.

own nature; the most tyrannical government is powerless to control the inward workings of the mind." Jones v. Opelika, 316 U.S. 584, 6180 (1942) (Murphey, J., dissenting), *rev'd*, 319 U.S. 103 (1943). That was in 1942; it is, of course, no longer true that the government is powerless to control the inward workings of the mind. It can control the inward workings of the mind by forced druggings. The government, in this case, forcefully and over the strongest protest, was exerting control over the inner workings of the mind of David E. Riggins. Although "1984" has come and gone, the Orwellian "Thought Police" are now within the realm of scientific possibilities. As Justice Brandeis so wisely observed in his dissent in Olmstead v. United States, 277 U.S. 438, 479 (1927), "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficient. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." The state may be telling us that it is only "treating" these people for their own good, but it seems to me that the beneficent goal of treatment is being turned into an "insidious encroachment" on the dignity and integrity of humans who ought to have the right to refuse to be drugged into an unnaturally tranquil and submissive state.

The criminally accused have a fundamental right to be present at their trial and to confront witnesses against them. This right derives from the common law and is required by our sense of natural justice. Such rights are embodied in the sixth and fourteenth amendments to the

United States Constitution and in article 1, section 8 of the Nevada Constitution, which provides that "the party accused shall be allowed to appear and defend in person."

That right to be present at one's own trial necessarily means the right to be present as one really is, not as a chemical-conjured *persona* which bears little resemblance to the "real" person as he or she would be in the natural, undrugged state. Competent persons (as Riggins was judicially declared to be) defending against criminal charges should not, in any system of criminal justice, be compelled against their will to take into their brain drugs which radically alter their thinking, emotion and behavior.

In a case comparable to the one now before us, State v. Maryott, 492 P.2d 239 (Wash. App. 1971), the trial court allowed the state to continue administration of librium and other "minor" tranquilizers to the defendant against his will. The Washington Court of Appeals reversed his conviction, holding that to allow the state to administer drugs against the defendant's will was to allow the state to alter the judgment and mental capacity of its adversary. The court observed that "[o]ur total legal tradition is contrary to this." 492 P.2d at 241. I agree.

The *Maryott* court drew a parallel between the state's forced use of drugs and the use of chains and torture. Both affect the ability of an accused to use freely his mental faculties at trial. The court states that "[a]lthough drugs have not always been the subtle menace they now are in our society, action by the state which affected the

reason of a defendant at the time of trial was forbidden at an early time." *Id.* at 241.

A criminal defendant should not be deprived of his or her right to "appear and defend" by means of the state's forced administration of antipsychotic drugs. An accused has a right to be present at the trial in a natural state, free from the effects of modern mind meddling.

Right to Present Evidence

Riggins has also been denied his right to present relevant evidence, specifically, *himself*, in his true mental state. Where, as here, the sole issue at trial is the defendant's mental state, the most compelling evidence available is the defendant himself. No testimony of psychiatrists, psychologists, social workers, friends or family can approach the insight a jury is afforded by the opportunity to see and hear the defendant, *as is*. In order to be of any real benefit to the finders of fact the defendant must be presented in his natural state, not under the influence of mind altering drugs. It is the quality of Riggins' natural mental state that is at issue here. By distorting Riggins' natural mental condition, the state masked evidence critical to the sole issue at trial. The state was allowed to cover Riggins' personality with a chemical veil that prevented the jury from seeing the accused as he really was.

This court has previously recognized that the conduct and demeanor of a defendant after the crime are relevant to the jury's consideration of insanity at the time of the offense. Sollars v. State, 73 Nev. 248, 316 P.2d 917 (1957); State v. Lewis, 20 Nev. 333 (1889). The weight to be

given to the defendant's after-the-fact mental condition is a function of the jury. In *Sollars*, above, we quoted from 2 Wigmore on Evidence (3d ed.) 25, § 233:

> A condition of mental disease is always a more or less continuous one, either in latent tendency or in manifest operation. It is therefore proper, in order to ascertain the fact of its existence at a certain time, to consider its existence at a prior or subsequent time.

73 Nev. at 261, 316 P.2d at 924.

The courtroom demeanor of a defendant is the most reliable evidence of mental condition. Certainly an "expert" cannot draw a verbal picture of a defendant's condition that is anywhere near as reliable as would be an observation of the defendant in an undrugged, natural state. In State v. Lewis, above, we discussed the limitations of verbal description as opposed to direct observation:

> As a general rule it is undoubtedly true that it is the facts which a witness gives of the conduct, acts, manner, and conversations of the defendant which constitute the greatest value of his testimony, and that the testimony of a witness having but a limited knowledge upon these matters ordinarily has but little, if any, weight with the jury; but it is not true that a witness is bound to give, or that he can in all cases give, the glare of the eye, the wild look, the peculiar expressions, or strange demeanor of the defendant. *There are many cases where the mental condition of a person depends as much, or more, upon his looks and gestures, connected with his acts, conduct, or conversation, as upon the words and actions*

> *themselves;* and it would be difficult, and sometimes impossible, for the witness to intelligently give all of the details upon which his opinion is based

20 Nev. at 345-46 (emphasis added).

In Washington v. Texas, 388 U.S. 14, 19 (1967), the United States Supreme Court announced that few rights are more fundamental in our jurisprudence than that of an accused to present his or her version of the facts. Here Riggins was not permitted to present his version of the facts because evidence crucial to that version was suppressed by the drugs that had permeated his brain. Throughout the trial the jury sat and watched Riggins in a controlled and to the jurors what was apparently his normal mental state. Little wonder it is that the jury concluded that Riggins was in a similar, composed state at the time of the bizarre and brutal slaying in this case.

In disapproving the forceful administration of mind-altering drugs to criminal defendants, I do not mean to be understood as saying that these drugs should never be employed in a prosecutorial context. There may be times when the defendant himself may seek the help of these drugs; and there may even be ways in which the drugs can be employed in a manner in which the defendant's basic right to be and remain *himself* is not curtailed. I object only to forcing drugs upon people who do not want to be drugged.

/s/ Springer, J.
Springer

SUPREME COURT OF THE UNITED STATES

No. 90-8466

David Riggins,

Petitioner

v.

Nevada

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Nevada.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 7, 1991